

Minutes of the Board of Adjustment meeting held on Monday, October 8, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Roger Ishino, Chair
Rosi Haidenthaller
Preston Olsen
Tom Halliday
Chad Wilkinson, Community Development Manager
Ray Christensen, Senior Planner
Tim Tingey, Administrative & Development Services Director
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Travis Nay, Vice-Chair

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Roger Ishino explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Tom Halliday made a motion to approve the minutes from September 10, 2012 as submitted. Rosi Haidenthaller seconded the motion.

A voice vote was made. The motion passed, 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1456 – SHAWN BRADLEY – 5788 South Oxford Hollow Creek – Project 12-85

Mr. Wilkinson stated this request to amend a condition of approval for a variance that was approved a couple of months ago for a setback on an accessory structure (large game court). The applicant sent in a request to reconsider requiring a zone change for the property. After staff looked at the city and state code, it was found there is no specific provision prohibiting a split zone property. In addition, the setbacks and building heights were similar in each zone. Looking at all the issues involved, staff concluded that there would be more detrimental effects from requiring that condition to be fulfilled than to just allow this to remain as a split zone property. This is very unique and specific to this particular situation. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff is recommending modifying conditions of approval to eliminate condition #2 requiring a zone change.

Mr. Halliday wanted it clarified that the A-1 zone allows agricultural use. The applicant will not be permitted to conduct that use on the R-1-8 portion of the property. Mr. Wilkinson responded in the affirmative.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Ms. Haidenthaller made a motion to modify the conditions of approval to the variance to eliminate condition #2, requiring a zone change.

Mr. Halliday seconded the motion.

Vote recorded by Mr. Wilkinson

A _____ Mr. Olsen
A _____ Ms. Haidenthaller
A _____ Mr. Halliday
A _____ Mr. Ishino

Motion passed, 4-0.

The Findings of Fact have previously been approved. This change in condition did not require a change in the Findings of Fact.

CASE #1461 – TODD & SHERIE COMISH – 4650 South Meadow Road – Project #12-123

Todd and Sherie Comish are the applicants requesting a rear yard setback variance for a detached garage. Ray Christensen reviewed the request and location at the property addressed 4650 South Meadow Road, located in the R-1-8 zone. Murray City Code Section: 17.100.090.E. An accessory structure must be located six feet or more behind the dwelling. The applicant has recently constructed a detached garage and a patio roof cover at the back of the existing dwelling. The zoning regulation requires a 6 ft. minimum setback for a detached garage. The applicant's building permit plan shows a 6 ft. minimum setback from the garage to the patio roof cover support, but the new garage was constructed with about five feet setback from the posts of the patio roof structure attached to the dwelling. The zoning inspector did not approve the final inspection because of noncompliance to code for the minimum structure setback. The applicants are now requesting a variance to increase the size of a covered patio roof to a 22 ft. by 24 ft. size structure and increase the variance request for the detached garage to about 12.5 ft. There appears to be illegal structures in the neighborhood constructed without permits which is more of a zoning enforcement issue.

Based on review and analysis of the application materials, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial of the variance.

Mr. Ishino asked Mr. Christensen to reiterate what the variance request is pertaining to. Mr. Christensen stated that the decision needs to be based on the requested increase in size of the covered patio roof. Mr. Halliday asked Mr. Christensen to explain how the setback is measured. Mr. Christensen responded by stating the way code reads, there must be a six foot minimum setback from the furthest point of the dwelling. In this particular case, the patio roof becomes part of the dwelling when doing the measurements. Mr. Halliday asked who discovered the setback noncompliance in this

case. Mr. Christensen stated that the zoning inspector discovered this during the final inspection of the structure. Mr. Halliday then asked why the building department didn't catch this. Mr. Christensen stated that this issue is a zoning requirement. When the building department goes out to a site they are looking at the building code requirements (i.e. where the footings are set) not zoning requirements. It is up to the property owner to follow the plan with the required setbacks.

Sherie Comish, 4650 Meadow Road stated that the garage was built and passed inspection a year ago. The patio was added this year. The first plan submitted for the patio was denied by the city due to it not meeting the 6 ft. setback requirement. Ms. Comish stated that they asked several people (not specific on who the "people are") what the purpose of the setback is for. She was told by those people that she could file for a variance, but they were rarely granted and they couldn't tell her what the purpose was. Ms. Comish then stated they decided to move the structure back, but during construction there was a measurement error, so the columns are 8 in. past the required setback. Since they needed to file for a variance, they also decided to ask for the additional extension of what they originally wanted to do. If the full extension cannot be granted, she is requesting to at least give them the 8 in. Ms. Comish did want to point out that if the patio had been built 6 ft. back from the house they wouldn't be at this meeting, because they would have been able to build the full size patio without any zoning requirements. As it is, the existing patio was built in the 1950's and seems to have existed out of code for 50 years without any problems, but since they wanted to build a new structure, they had to have an inspection to make sure it was demolished. That inspector told them they had passed and everything was fine, then called them and told them that the overhang was past the 6 foot required setback. The third time the inspector came out is when the 8 in. was discovered. Ms. Comish thinks that the 8 in. should at least be permitted as the city's own inspector hadn't noticed it right at the start. Ms. Comish wanted to point out that almost every single adjoining property has a structure that is closer to their property line than their patio would be. The neighbor's house behind them comes within 12 ft. of the property line. She stated that the city's response for the ordinance is to provide adequate open space separation between buildings and property boundaries to meet building and fire codes and provide access onto the property. Ms. Comish referred to the photos that were shown, stating there is adequate access past their garage, even if the full variance is granted. She stated they have met every fire code and open space ordinance. She is confused as to the purpose of the 6 ft. setback code and why it is being applied in her case. After walking through her neighborhood and counted close to 18 houses that clearly have an accessory building within the 6 ft. setback area. It is so common in her neighborhood that no one thinks to ask what the setbacks need to be.

Ms. Haidenthaller made note that in order to approve the larger variance the applicant must prove a hardship. Ms. Haidenthaller then asked Ms. Comish what she would claim her hardship is.

Ms. Comish stated that her lot is a west facing lot and to sit out on the patio in the middle of the summer is extremely hot without shade. The reason the garage is built so far forward is due to the power lines, the city had them slide the garage forward 7 ft. Ms. Comish noted that they did not put in the power lines and they can't change the fact that the lot is a west facing.

Mr. Ishino wanted to make sure that everyone understands the difference between

enforcement and examples of what is currently in the neighborhood.

The discussion was then opened up to public comment.

Taylor Riley, 4565 South 200 East, is a resident of Murray and a friend of the applicant. He stated that his home which was built in the 1940's is not in compliance with the 6 ft. setback ordinance either. He brings up the same issue as the Comish's in that; there are many homes on the street in his area that are not in compliance with the 6 ft. requirement. Looking at it from the other side of things, his back yard neighbors were going to build a deck that was not within code and Murray City did not let them build the deck. He actually appreciated that enforcement, but he feels that was merely for safety reasons. The issue with the applicant is not a safety issue in his mind. He has asked numerous times why the 6 ft. ordinance is in place, but has not gotten a direct answer. He feels that the Comish's should be able to have their garage and patio as it is an added benefit to their property.

Joseph Dillier, 4658 Meadow Road is a neighbor. He does not understand the 6 ft. ordinance either and feels that everything the Comish's have done is beneficial to the neighborhood.

Laura Loveless, 4685 Meadow View Road is a neighbor and stated that her mother, who also lives on the same street, has a west facing patio that has a structure to help with shading that area in the afternoon/evenings. She is in support of the structures that the Comish's have built.

Mr. Ishino asked staff to clarify the reason for the 6 ft. separation ordinance. Mr. Wilkinson stated that Mr. Tingey has spent some time talking with the applicant on the purposes behind this requirement. As with any standard this is a policy decision by the City Council and is a regulation that has other factors than just safety to it. One of those factors pertains to the fire code which identifies adequate separation between structures. Another consideration is aesthetics and having some separation between buildings on site. This provides for more open space and not over building on a lot. Separation between buildings helps with gaining access to the property and the other buildings on that property. By definition of the code, the rear yard begins from the furthest point of the house and is measured between there and the rear property line. Side yard separation is designed to provide separation between the side property line and the structure. Any structure within that side yard must meet the standard of a minimum of 8 ft. on one side with a total of 20 ft. between the two sides. In this case, the patio extends the side yard further back. Mr. Wilkinson made note that the two hardships that cannot be considered are financial and self-imposed. This was a project that was approved, but wasn't built to the plan that was approved.

Mr. Ishino asked staff to clarify why the applicant states there is an 8 in. difference and the city claims there is a 12 ft. difference. Mr. Christensen went back to the photos that were taken of the property to show where staff's measurements came from.

Todd Comish, 4650 South Meadow Road is the applicant and a contractor by trade. Mr. Comish explained that when the inspector came and they measured, Mr. Comish took the smart end of the tape measure and gave the other end to the inspector. There was an 8 in. difference plus 2 in. for the wainscot block. Then the columns were measured from the brick and that is where the mis-measurement was. Mr. Comish stated that he

put the column at 12 ft. and they should have been 11 ft. 6 in., an error on his part. He didn't think much of it at the time.

Ms. Haidenthaller noted that she has a hard time seeing any hardship to the applicant for the larger variance. There have been errors made about the placement of the columns, but she would be inclined to approve the variance. Mr. Olsen feels that it would be an undue hardship to make the applicant move the columns. He feels it was an honest mistake. Mr. Olsen did point out that he feels it is unfair to ask staff to have to explain why the City Council passed some law 15-20 years ago. He doesn't feel it is their role as the Board of Adjustments to change the zoning laws. Mr. Halliday stated that he is having concerns on why this wasn't caught when it was originally being done. He tends to hold the city responsible for their measurement mistakes and he feels that this should have been caught before it was built. He sees how miniscule moving the pole would be, but he also feels there are certain laws and rules that are in place for a reason. Mr. Ishino acknowledges the minor measurement differences, he also acknowledges that if overlooked the measurement requirements can get out of hand. As a Board and residents of the community, there is an obligation to follow the code. Mr. Olsen stated that he feels that an additional role of this Board is be empathetic when people make small mistakes and grant some forgiveness so they don't have to make major changes. Mr. Halliday wanted to know how this fits into what the law says as to what they can and can't do.

Tim Tingey stated the plans that were approved, whether they were off by 14 ft. or 6 in., the plans that were approved when they go through the review process were looked at, were approved by the building inspector and the Community & Economic Development division. It's an obligation of the builders and whoever constructs the project that it is built according to plan. That didn't happen, whether it's 6 inches or 14 feet, it didn't happen. That obligation occurred. As far as reviewing the plan, we approve the plan based upon the representation. The final inspection is the final review of this to determine that it be built it to plan, and it wasn't built to plan. Mr. Tingey noted the standards have to be met. The standards are State standards and not necessarily Murray City's standards for determining whether there is a hardship associated with the variance request. Mr. Halliday responded that there are standards the Board is dealing with in regards to this variance. He asked Mr. Comish how far the cantilever is from the outer edge (most west corner) of the post. Mr. Comish responded 6 in.

Ms. Comish noted the information she found on the city's website regarding variances, indicates that one of the reasons the state will allow a variance is if there has been substantial compliance and the spirit of the ordinance has been met. She stated in her opinion, they have met the spirit of the ordinance and there is substantial compliance with the ordinance for the 8 in. in question. She stated that when looking at the patio, one would probably not be able to detect that it is 8 in. out of compliance. Mr. Halliday responded that may be true, however, the law is written for a reason.

Mr. Ishino called for a motion or additional discussion. Mr. Olsen stated that in his opinion, the staff is correct in that there are no special circumstances on this lot, but there has been substantial compliance with the construction of the project. He stated the additional encroachment into the setback is an undue hardship to make people tear down the structure. Mr. Ishino stated this has evolved into a discussion about the 8 in. compliance and not the granting of the 24 ft. structure.

Ms. Haidenthaller made a motion to approve the 8 in. variance, which is for the existing location of the post at whatever exact measurement it is, i.e. 8 in., 12 in., etc. at its current placement. A. The variance is granted due to there being adequate separation of space between the patio post and the garage or accessory building. B. The hardship is that an understandable measurement error was made in the placement of the post. The applicant also experienced a hardship in the placement of the garage originally because of Murray City Power Department requiring it to bring it 7 ft. forward on the property. C. Granting the variance is essential to the enjoyment of the property right possessed by other properties in the district. She stated that she feels the Board is fulfilling the spirit of the law by allowing the Comish's to have this variance. D. The variance will not substantially affect the general plan and will not be contrary to public interest. It was only discovered after a second and third inspection and therefore isn't too contrary to the plan. E. The purpose of the land use ordinance is observed and substantial justice is done. The Board's purpose is to grant a variance when one is merited and she believes the Comish's have made a reasonable effort to comply and originally thought they were in compliance.

Mr. Olsen seconded the motion.

Vote recorded by Ray Christensen.

A _____ Mr. Olsen

A _____ Mr. Ishino

A _____ Ms. Haidenthaller

N _____ Mr. Halliday

Motion passed, 3-1. Mr. Halliday stated his nay vote is due to the issue that it makes no difference whether the variance is 6 in. or 14 ft., there must still be a hardship. He stated that these rear yard separation situations should be reviewed further. He was speaking in a general term and with regard to potentially the number of other similar situations there may be throughout the city.

Mr. Olsen made a motion to approve the Findings of Fact as rewritten to reflect the motion. Seconded by Ms. Haidenthaller.

Motion passed 3-1. Mr. Halliday voted nay.

OTHER BUSINESS

There was no other business to discuss.

Meeting adjourned.

Chad Wilkinson, Manager
Community & Economic Development